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HUMAN RIGHTS COMMITTEE

Fortieth session

SUMMARY RECORD OF THE 1013rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 24 October 1990, at 3 p.m.

Chairman: Mr. POCAR

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Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Canada (continued)

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GE.90-18113/2607B

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Canada (second and third periodic reports) (continued) (CCPR/C/51/Add.1; CCPR/C/64/Add.1)

1. The CHAIRMAN invited the Canadian delegation to reply to the questions put by members of the Committee at the previous meeting with regard to section X of the list of issues.

2. Mr. LOW (Canada) said that the question of the rights of persons forming part of Canada's minorities was extremely complex both from the legal and historical, economic and social standpoints. Some aspects of the question had been studied in detail in 1984 when the Committee had considered the supplementary information provided by Canada in document CCPR/C/1/Add.62, and he urged members of the Committee to refer to the summary records of the meetings at which the Committee had examined that information (CCPR/C/SR.558, 559, 560 and 562).

3. Replying to the questions asked in connection with multiculturalism, he explained that Canada's policy was not to put persons who differed from the majority of the population into a melting-pot, as it were, but rather to protect and promote, in accordance with the principles set forth in article 27 of the Canadian Charter of Rights and Freedoms, the cultural diversity that constituted the national heritage. Thus the objective was to give everyone the possibility and right to participate fully, and on an equal footing, in the social, economic and political life of the country. For that purpose, Parliament had in 1988 adopted the Canadian Multiculturalism Act, under which a minister was responsible for administering and co-ordinating multicultural programmes executed by government agencies responsible to Parliament. For example, programmes had been developed in the field of justice in order to secure co-operation between the federal and provincial authorities to combat discrimination and racism in the training of lawyers and to supplement the training of federal and provincial judges. Another programme had been established in co-operation with the Canadian Labour Congress to combat racism in the workplace. In education, measures had been taken to review school curriculae and to give them a multicultural dimension. In health care, provision had been made for training programmes, and special departments had been set up to ensure that the cultural traditions of certain minorities were respected. Finally, the Canadian Heritage Languages Institute, established for the purpose of promoting all the languages that contributed to the linguistic wealth of the country, subsidized the preparation of language teaching material. Mention should also be made of the recent establishment of the Canadian Foundation for Interracial Relations.

4. In connection with the situation of the Mohawk Indians and the incidents that had recently taken place at Oka, he pointed out that the rights of the Mohawk community had never been suspended and that the Mohawks had never been forbidden access to the courts. In addition, with regard to the means of communication to which they were reported to have been refused access, the persons who had been at the drug addiction treatment centre had been armed and had rejected the peaceful solution proposed by the Government, which had guaranteed that those who laid down their arms could communicate freely with

persons of their choice. In that specific case, a Canadian court had declared that in the circumstances the restriction to a single interlocutor on both sides (a military negotiator and a negotiator representing the armed resistance) had not been incompatible with the provisions of the Charter. It was difficult to know after the event whether the invocation of the National Defence Act had or had not been justified, since the developments that had led up to the situation were extremely complex, went back to ancient historical times, and were difficult to evaluate. For example, in 1912 the Judicial Section of the Privy Council of Canada had decided that the Mohawks had no legal right to the lands in question and that their claims were unfounded. Subsequently, a conflict had arisen between the Indians and the lawful owner of the lands and, when the negotiations had broken down, the Federal Government had brought back the lands, which were now at the disposal of the band.

5. The Oka events had caused the authorities, as well as the leaders of the indigenous populations of Quebec and of Canada, to reflect on appropriate ways of settling territorial conflicts and to reconsider the legislation in that field. For example, in Canada there were two procedures for settling territorial claims, one under which general claims based on traditional occupation of the lands concerned by indigenous populations could be dealt with, and another under which specific claims based on allegations that the Government had not discharged some of the obligations incumbent upon it under the Indian Act could be dealt with. Specific claims were therefore linked to treaty obligations, whereas general claims related, in general, to lands that had not been the subject of treaties, although some exceptions were admitted. Pursuant to the application of those two types of procedure, a number of autonomy agreements had already been negotiated and concluded, and their implementation was guaranteed under federal law. Although the Government was determined to find a prompt, just and equitable solution to the problems that still arose in that field, the situation was still very difficult, given the complexity of the historical circumstances, and it seemed unlikely that the Constitution would be amended in the near future so as to allow all applications for autonomy to be satisfied. Nevertheless, the Federal Government was already planning to transfer certain responsibilities to the Territories, particularly with regard to economic development. Furthermore, Bill C-31 to amend the Indian Act was currently being considered by various authorities, and in 1985 Parliament had already adopted amendments designed to eliminate discrimination against Indian women, to restore the rights of the bands, and to grant them greater autonomy. Amendment of the Indian Act posed problems because some bands were opposed to the inclusion of women and children in their lists, which would entail the reintegration of 76,000 persons into communities for which resources for such an increase in population had not yet been provided for. Consequently, some difficulties persisted, and the effects of Bill C-31 would have to be carefully evaluated.

6. The Sparrow case and another case also of interest to the indigenous peoples had greatly helped to clarify the rights of indigenous peoples in Canada. The importance of the decision handed down in the Sparrow case was due to the fact that it had been the first time that the Supreme Court of Canada had interpreted the expression "the existing rights - ancestral or treaty - of the Indians" in article 35 of the Constitution. It was a question of knowing whether a particular provision of the Fisheries Act, establishing limits for the length of nets, had been incompatible with article 35 when the fishing was done by indigenous peoples. The Court had clearly affirmed that

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priority had to be given to the fishing done by indigenous peoples for subsistence and other purposes. That decision had had, and would obviously have, important repercussions.

7. The other case, heard in May 1990, had been concerned with the question of what could be considered to be a treaty. In the case in point, it was a document drawn up in 1760 by a senior British officer and an indigenous group. The Court had held that what characterized a treaty was the intention to create obligations - and therefore the presence of obligations - as well as a certain degree of solemnity. On that basis, it had decided that the document in question did in fact constitute a treaty protecting the customs of the indigenous peoples and it had therefore rejected, as being incompatible with the treaty, a suit for compensation for damage caused to trees and for lighting a fire outside authorized camping places in a region where fires had had a religious meaning for the indigenous peoples. The recognition of a document of that kind by the courts would also have important repercussions on future relations with the indigenous peoples.

8. Turning to the question of languages, he said that six indigenous languages enjoyed official status in the North-West Territories, where the study of an indigenous language was compulsory for all schoolchildren. In the other regions of the country, more attention was beginning to be given to the study of indigenous languages in primary and secondary schools, which now offered teaching in those languages to more than half of the Indian pupils. There was also federal aid for cultural centres and for educational and radio programmes designed to promote the continued use of local indigenous languages. Very large sums of money had been allocated for those purposes. There were, of course, practical limitations on the aid provided by the Canadian Government for the teaching of languages, due particularly to the fact that certain languages did not have a written form. Nevertheless, those responsible were trying to overcome the obstacles in order to ensure that the languages survived. With the exception of the North-West Territories, the official languages were English and, in Quebec, French, and only the English-speaking and French-speaking communities could deal with the authorities in their own language. That posed rather complex administrative problems. However, in cases involving individuals such as in relations with a court, the right to address the court in the mother tongue was guaranteed by the Constitution and the possibility of using indigenous languages before the courts was being increasingly provided for, quite apart from the use of an interpreter guaranteed by the Canadian Charter of Rights and Freedoms. In the north of the country there was also a tendency to require that juries should be composed of persons capable of understanding the accused in the language of his choice. Finally, it must be pointed out that an amendment to the Official Languages Act provided for a change in the provisions of the Criminal Code to guarantee to all Canadians, not only the right to an interpreter, but also the right to use English or French in all criminal proceedings, the right to require that the judge and the jury, if there was one, understood the language of the accused, and the right to require, when the Federal Government instituted proceedings, that the Advocate General spoke the language of the accused. Although it was not possible to guarantee those rights for all the languages spoken in Canada owing to their number, the Federal Government was trying to improve the situation in respect of English and French, since it considered that the language issue was very important in the country.

9. Mr. Wako had asked whether any consideration had been given to amending the Constitution in order to take account of Canada's multicultural heritage. Article 27 of the Canadian Charter of Rights and Freedoms stated that the interpretation given to the Charter must be consonant with the promotion, maintenance and enhancement of the cultural heritage of Canadians. However, so far it had not been possible to guarantee, in the Constitution itself, new rights for the indigenous peoples. The Government was studying what could be done to that effect and, in the meantime, was adopting legislative measures to fill in the gaps. Once again, the complexity of the problems that arose with regard to the indigenous peoples should be stressed: for example, in the province of Quebec alone there were 11 different indigenous groups.

10. In conclusion, he referred to the experience that the dialogue with the Committee represented for the Canadian Government. The questions asked by members of the Committee to enable them to evaluate Canada's legal, social and economic system and to ascertain the measures taken to implement the provisions of the Covenant related, in general, to complex areas. The Canadian Government had done its best to reply and had not tried to convince the Committee that everything was perfect in its country. In Canada, as elsewhere, there were many problems that the Government was trying to understand and to solve through just and viable solutions. His delegation had taken note of the views expressed and of the criticism implied in some questions, since Canada took its obligations under the Covenant very seriously.

11. The CHAIRMAN invited members of the Committee to make general comments on Canada's reports and on the dialogue they had had with the Canadian delegation.

12. Mr. AGUILAR URBINA said that, as Mr. Prado Vallejo had stated, there was no human rights paradise; that had been ascertained once again during the consideration of Canada's reports, but the proceedings had also shown - and that was what mattered - that Canada took its obligations under the Covenant very seriously.

13. The situation with regard to Canada's minorities, and especially its indigenous minorities, was still a source of some concern. Unlike many other countries, Canada recognized the existence of minorities and seemed to want to solve the problems that arose in connection with them. He hoped that it would do so in compliance with the provisions of the Covenant. He, too, was worried about the derogation clause provided in article 33 of the Canadian Charter of Rights and Freedoms, which went much further than what was provided for in article 4 of the Covenant itself.

14. The Committee's dialogue with the Canadian delegation had been one of the most constructive and he thanked the representatives of Canada for their co-operation.

15. Mr. EL-SHAFEI noted that, since the submission of Canada's first reports, many measures had been taken to protect human rights; the most important had been the decision to incorporate human rights in the 1982 Constitution and the agreement concluded in November 1981 between the Federal Government and the Provinces, with the exception of Quebec, to include in the Canadian Constitution a series of legal principles applicable by the courts under which any legislation contrary to them was rendered inoperative.

16. He thanked the Canadian delegation for its very comprehensive replies to the questions put to it. Federal and provincial legislation was now being reviewed for the purposes of bringing it into line with the Canadian Charter of Rights and Freedoms, bearing in mind also the provisions of the Covenant.

17. Nevertheless, there were still several points on which concern had been expressed. First, there was the clause contained in article 33 of the Canadian Charter which stated that Parliament or a provincial legislature might adopt legislation where it was expressly stated that the legislation, or a provision thereof, would have effect independently of a given provision of article 2 or of articles 7 to 15 of the Charter. That clause might rightly give the impression that Parliament or provincial legislatures were not bound by certain articles of the Constitution. In that connection, he had been somewhat reassured to hear Mr. Low state that the validity of any law adopted by Parliament or a provincial legislature having effect independently of the above-mentioned articles of the Charter could be challenged before the courts. It was not certain, however, that in practice a person who considered that the protection of a freedom or right had not been secured in an appropriate manner by an item of legislation could still challenge its validity. The accumulation of applications for asylum and the protection of the rights of the indigenous peoples were further sources of concern.

18. Mrs. HIGGINS thanked the Canadian delegation for having tried to reply to all the questions put to it. She herself shared the opinion expressed by most members of the Committee on the subject of article 33 of the Canadian Charter of Rights and Freedoms, which provided for a derogation clause that did not appear to be compatible with article 4 of the Covenant.

19. In order to dispel any misunderstanding concerning her position on the situation of asylum-seekers, she explained that in her opinion the 1951 Convention relating to the Status of Refugees should be interpreted in a manner consonant with obligations under the Covenant and that asylum-seekers should enjoy the rights recognized in the Covenant, even if the question of asylum was not mentioned in it. She did not think, however, that those questions came under articles 9 or 14 or even 7 of the Covenant, but rather under article 26. Nevertheless, she still considered that the system adopted by the Canadian Government to accelerate the processing of applications for asylum and of refugees, in which a kind of target group was selected, was not the most appropriate. In particular, she would like family considerations never to be lost sight of.

20. With regard to the explanations given by the representatives of Canada regarding article 14, she pointed out that, in the L v. Canada case, the question of the applicability of article 14 to administrative decisions had not been settled. Moreover, although it was normal that the question of collective bargaining should be dealt with in texts regulating relations between workers and employers, the right to collective bargaining if it was set forth in one of the two Covenants, must be able to be exercised as a human right.

21. The Canadian delegation had supplied some very clear information on the problems, even temporary, that might arise with regard to entitlement to disablement benefits, which she hoped would be solved very soon. The details provided on the application of the concept of internal self-determination were extremely useful and demonstrated that self-determination did not necessarily

imply secession or sovereignty and that a people could live autonomously in accordance with that concept and with the principles set forth in article 27 of the Covenant. She hoped that, as the Canadian delegation had reaffirmed, the Federal Government would continue its constitutional reforms to facilitate the indigenous peoples' movement towards autonomy. In connection with the events that had taken place at Oka, she too considered the use of force to be quite unacceptable and had merely asked whether other measures should not have been taken, in conformity with the law, so as to respect the provisions, not of the Canadian Charter of Rights and Freedoms, but of the Covenant.

22. In general the human rights situation in Canada was quite exceptional, even if a few problems remained in certain areas. However, the Canadian Government was aware of them and sparing no effort to solve them, while respecting human rights. She congratulated the members of the Canadian delegation on their work and thanked them for their co-operation.

23. Mr. PRADO VALLEJO welcomed the positive dialogue that had been established between the Committee and the Canadian representatives, who had responded to the Committee's concerns in an objective, frank and precise way, demonstrating that they had carefully prepared and informed themselves, and displaying an outstanding spirit of co-operation. The two reports submitted by Canada were excellent, consistent with the Committee's guidelines, and gave an accurate picture of the situation in Canada concerning the implementation of the Covenant.

24. However, some problems, particularly those of minorities and indigenous peoples, had still not been solved; it was to be hoped that they would be rapidly settled in a spirit of equity and respect for the rights enshrined in the Covenant. It was also regrettable that the freedom of expression of public employees was limited. Finally, the marked differences between the provincial legislations and federal legislation in the field of human rights were liable to give rise to discrimination. He was sure, however, that the Canadian Government would make every effort to find a way to implement the provisions of the Covenant to the full.

25. Mr. WAKO noted with satisfaction that Canada took its obligations under the Covenant very seriously and followed the Committee's work closely. The two reports could well be described as excellent; they gave extremely detailed information about many issues, particularly the jurisprudence of domestic courts in respect of the various rights embodied in the Covenant and the way in which the courts interpreted those rights. The supplementary information provided by the Canadian representatives in their oral statements had given the Committee a more detailed picture of how Canadian citizens were able to enjoy the rights guaranteed by the Covenant.

26. The Canadian Government was taking steps to resolve all problems that might arise, particularly those of indigenous peoples, by adopting various provincial and federal laws. Other countries could usefully refer to Canada's experience in coping with problems that arose in connection with ethnic minorities.

27. The question whether article 14 of the Covenant was applicable to administrative courts had still not been resolved. It seemed that those courts were actually judicial bodies to which some, if not all, of the principles set out in article 14 - such as the principles of independence and

impartiality - should apply. It would therefore be useful if Canada could provide more detailed information on that point. It might also give some thought to the way in which the right to autonomy of indigenous peoples could be incorporated into constitutional law.

28. In conclusion, he said he had been most impressed by the frankness and honesty shown by the members of the Canadian delegation in replying to the Committee's questions.

29. Mr. MAVROMMATIS welcomed the fruitful dialogue that had been established between the Canadian delegation and the Committee. The delegation's replies to the Committee's questions on self-determination had clarified some issues and dispelled certain doubts. It was clear that considerable progress had been made in Canada, particularly from the standpoint of respect for the rights of ethnic minorities, since the submission of the initial report. The human rights problems that had arisen in Canada were mainly the result of its demographic composition and its multi-ethnic nature.

30. Moreover, there was no doubt that Canada's policy towards asylum-seekers was one of the most liberal in the world, which was particularly praiseworthy given that most other countries - particularly European countries - were now adopting increasingly restrictive measures in that respect. Nevertheless, Canada still had the means and the possibility of doing even more on behalf of indigenous peoples and refugees.

31. Mr. ANDO said that Canada's report was quite exemplary. The delegation's replies to the Committee's questions also demonstrated the Canadian Government's desire to co-operate with the Committee. Nevertheless, the Committee's consideration of the report also revealed that there were many human rights problems in Canada, which were mainly due to differences in attitude between the Federal Government and the provincial and territorial governments and to the diverse and multi-ethnic nature of Canadian society. The main problems still to be resolved were the situation of refugees and asylum-seekers, the rights of indigenous peoples and trade union rights.

32. It was true, as Mr. Low had said, that all efforts in the field of human rights should aim to achieve unity in cultural diversity and equality for all; that was certainly a very difficult aim to achieve. The most essential prerequisite was patience, because the process was a slow one. Moreover, in the quest for a solution, the interests of future generations must never be overlooked. Finally, it was essential to remember that the rest of the world was following events in Canada, in order to profit from its experience. The Committee earnestly hoped that the positive developments that had taken place in Canada would continue.

33. Mr. MYULLERSON thanked the Canadian delegation for the frankness and openness that had characterized its replies to the Committee's questions and the dialogue that had been established during the past two days. Canada provided an excellent example of the way that human rights problems should be tackled. His few remaining concerns were mainly connected with the fact that Canadian society was multicultural, multilingual and multi-ethnic, which was both an asset and the source of serious problems. In that area, too, the way in which Canada was dealing with its problems was an example to all other countries. He was also concerned about article 33 of the Canadian Charter of Rights and Freedoms, since the difficulties it raised reminded him of the

problems encountered by his own country, owing to the incompatibility between certain legislative provisions of the central Government and those of the republics.

34. Mr. WENNERGREN thanked the Canadian delegation for the way it had answered the Committee's questions and the information it had provided about the legal system in force in Canada, including recent changes. He welcomed the efforts that Canada had made on behalf of indigenous rights, which he considered a very encouraging development.

35. He wished to point out an omission concerning article 1 of the Covenant: the Committee did not know the position taken by the Canadian provinces in respect of that article. Canada's initial report did not give any information on the matter, although the Committee had emphasized on several occasions that it was desirable for State parties' reports to deal with each of the paragraphs of article 1. He hoped that such information would be included in Canada's fourth periodic report.

36. Ms. CHANET joined previous speakers in thanking the Canadian delegation for its most interesting replies and for the very constructive dialogue that had been established. She endorsed the concerns expressed by other speakers on refugee rights, the difficulty of applying laws subject to two legislations (federal and provincial) and, more particularly, on the derogation provided for in article 33 of the Canadian Charter of Rights and Freedoms. She wished to comment on three points: firstly, non-discrimination and minority rights; second, pre-trial detention; and third, trade union law.

37. To take her first point, article 27 of the Covenant stated that, in those States in which ethnic, religious or linguistic minorities existed, persons belonging to such minorities should not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language. Articles 2 and 26 of the Covenant guaranteed equality before the law and prohibited any type of discrimination based on race, religion and language. There was no contradiction between those two provisions: the right of a group to enjoy a communal cultural life, to practise its own religion and use its own language did not prejudice the right of individuals to exercise their individual rights, particularly the rights enshrined in the Covenant. Even if the individual rights of every member of the national community were acknowledged, the enjoyment of cultural life by a minority group did not, ipso facto, infringe the fundamental rights of the majority. The Committee had gone even further in paragraph 10 of its general comments on article 26 of the Covenant, stating that it was justified to grant additional rights and preferential treatment to certain population groups in order to correct an overall situation that was unfavourable to them. She realized that the issue was not a simple one and that it was essential to find a fair balance between all the groups concerned and the State. She, like Mr. Ndiaye, felt that it was important not to create ghettos which would encourage exclusion and marginalization. For that reason, group rights should not stand in the way of the full and complete recognition of individual rights, whether or not the individuals in question belonged to particular groups. It was that aspect which worried her when she considered the relationship between the Indian Act and the Canadian Human Rights Act and, in particular, article 67 of the latter, which the Committee had discussed in great detail. In its 1988 and 1989 reports, the Canadian Human Rights Commission had called for the

abolition of article 67 which, it said, prevented it from ruling on human rights cases involving indigenous peoples. She felt that the situation should be clarified during the review of the Indian Act. She was sure that the Canadian representatives would report to their Government on the position that had emerged during the Committee's discussion of the issue.

38. In respect of pre-trial detention, she wished to emphasize two points that deserved careful consideration by the Canadian authorities if the situation was to improve. Firstly, there was the average length of detention which, according to the figures given by the Canadian delegation, did not seem excessive. However, there were considerable discrepancies between different provinces, and they should be removed. Secondly, she noted that children of 12 could be subject to pre-trial detention. Although the Covenant did not specify a minimum age for detention, 12 seemed too low. Some European countries were trying to improve the situation, and several had prohibited the detention of minors under the age of 16.

39. Finally, in respect of trade union law, she had not been convinced by the Canadian delegation's explanation. She considered, in any case, that an obligation placed on an individual to pay subscriptions to a trade union to which he did not wish to belong was contrary to article 22 of the Covenant.

40. The CHAIRMAN, speaking in his personal capacity, expressed great satisfaction at the outcome of the two days of dialogue with the Canadian representatives. Canada's reports had been prepared in complete consistency with the Committee's guidelines which, given the unique structure of the country, had presented particular difficulties not experienced by other countries. The reports, together with the explanations provided by the Canadian delegation, had given the Committee useful information about national practice and the implementation of the Canadian Charter of Rights and Freedoms. The dialogue that had taken place had also been most useful, and the Committee had had other opportunities, too, to note the Canadian authorities' desire to co-operate. He welcomed the business-like way in which they had assumed their responsibilities, both towards the Committee and towards communities within Canada.

41. The discussion with the Canadian delegation had allowed the Committee to shed new light on the relationship between article 1 and article 27 of the Covenant, which was a matter of very great importance. He thanked all the members of the delegation, including those who had not actually taken the floor, and hoped that the dialogue would continue when Canada submitted its fourth periodic report, due on 4 April 1995.

42. Mr. LOW (Canada) expressed his appreciation of the Committee's words of praise for the Canadian delegation. He had two concluding remarks to make. The first concerned the definition of a "minority"; the indigenous peoples of Canada did not consider themselves to be minorities, and were not regarded as such by the authorities. Those peoples had made up the original Canadian nation, and they rightly refused to allow their position to be reduced to a state of subordination and dependence. It was not a question of vocabulary, but of a most important principle in the view of the authorities and of Canadians in general.

43. His second remark concerned the constraints which the Committee imposed by calling upon States parties to make their reports short. For that reason, some issues had not been dealt with in the third periodic report, although all questions that were still outstanding would be covered in the fourth periodic report.

44. Finally, speaking on his own behalf and on behalf of the Canadian Government, he thanked the Committee for its efforts - particularly a visit to Canada by several members to attend a human rights seminar - which had allowed Canadians and the other participants in the meeting to gain a better understanding of the provisions of the Covenant.

45. Mr. DUBOIS (Canada) thanked the members of the Committee for the quality of their analysis and the dialogue they had established with the Canadian delegation. The past two days had been devoted to difficult problems, since Canada was an immense country with a federal system of government, which brought together many diverse ethnic groups, each with its own rights and its own social system. The essential thing, in his view, was to establish an equitable balance between all those communities. He also assured the Committee that the issues that had not been covered would be dealt with in the next periodic report. He reaffirmed the desire of the Canadian authorities to continue the dialogue with the Committee which had been going on for a number of years now; any improvement in the human rights situation would be the result of the efforts of the Government and all other parties, including the minority groups. In conclusion, he stressed the need to bring about a radical change in people's attitudes, and not just in the law. The Canadian authorities took their role in promoting the provisions of the Covenant at an international level very seriously, and the appreciation expressed by the Committee had been a great encouragement in that task.

The meeting rose at 5.30 p.m.

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Fortieth session

SUMMARY RECORD OF THE 1014th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 25 October 1990, at 10 a.m.

Chairman: Mr. LALLAH

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Finland

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Finland (CCPR/C/58/Add.5)

1. At the invitation of the Chairman, Mr. Grönberg, Mr. Lahti, Mr. Lehtimaja and Ms. Mattila (Finland) took seats at the Committee table.

2. The CHAIRMAN welcomed the delegation of Finland and invited it to introduce that country's third periodic report.

3. Mr. GRÖNBERG (Finland), said that his Government's point of departure in preparing the third periodic report had been the Committee's general comments; it had thus been able to concentrate on new developments and not repeat information already given. At the beginning of the section on each article there was a reference to previous reports in which the specific question concerned had been dealt with. Since the presentation of the previous report, Finland had, in May 1990, ratified the European Convention on Human Rights. At the time of its accession to the Convention it had been thought that ratification would take two years but it had in fact been concluded within a year.

4. In December 1988, the Council of State had established a Committee on International Human Rights Issues, composed of representatives of all the major political parties in both the Government and the opposition, together with representatives of Amnesty International and the Finnish Red Cross, to assist the Ministry of Foreign Affairs in dealing with human rights questions. Civil servants from the Ministry of Foreign Affairs and the Ministry of Justice acted as advisers to the Committee, whose task was to follow developments relating to the international dimension of human rights and give its opinion thereon, to act as a co-operative body between the State authorities and private human rights organizations, to organize seminars and research on international human rights, and to disseminate information. The Committee had played an active part in preparing the third report.

5. As to the various articles of the Covenant, he intended to refer only to those to which it was considered appropriate to draw the Committee's attention. In connection with article 1, he explained that the Aaland Islands, whose population was mainly of Swedish origin, enjoyed extensive autonomy and a limited international capacity in so far as they were entitled to representation in the Nordic Council as part of the Finnish delegation. The existing Self-Government Act, dating back to 1951, would be replaced by a new Act to increase the autonomous status of the province and make it correspond as closely as possible to the original goal of autonomy, placing as few restrictions as possible on a province that did not constitute a separate State. The administrative and economic competence of the provincial authorities would be increased. The intended new Act could not be promulgated without the consent of the provincial parliament.

6. Under article 2, it was mentioned in paragraph 19 of the report that the Covenant had been applied for the first time by the Supreme Administrative Court in 1988. His delegation was prepared to provide more detailed

information on the subject and on the activities of the Parliamentary Ombudsman if the Committee so desired. A further observation on article 2 concerned the Provincial Administrative Courts, which in 1989 had been detached from the respective Provincial Administrative Boards and established as independent courts dealing with all administrative appeals. Their general jurisdiction now extended to questions relating to all rights; the safeguarding of those rights had been entrusted to local and provincial government authorities.

7. In connection with article 4, a new State of Defence Bill had been drawn up by a committee and presented to Parliament in December 1989. The requirements of article 4 of the Covenant had been taken into account when preparing the new draft legislation, which would incorporate not only the principles of proportionality and non-discrimination, but also the requirement of notification to other States parties through the Secretary-General of the United Nations in the event of derogation. The Bill had been so drafted that, even in time of war, article 4 could not be used to justify derogation from freedom of the press.

8. In relation to article 6, it had been mentioned in an earlier report that the death penalty had been abolished under the Finnish penal system in 1972. In May 1990, Finland had ratified the Sixth Protocol to the European Convention on Human Rights concerning the abolition of the death penalty. New legislation to regulate various techniques of artificial procreation and the donation, storage and use of human gametes and embryos had been drafted, and would probably be submitted to Parliament in 1991 and enter into force in 1992.

9. Under article 9, in connection with a decision on a particular case taken in April 1989, the Committee had said that it could not accept the State party's contention that, because military disciplinary detention was firmly regulated by law, it did not necessitate the legal and procedural safeguards established in article 9 (4). The Committee had further noted that whenever a decision depriving a person of his liberty was taken by an administrative body or authority, there could be no doubt that article 9 (4) obliged the State party to make available to the person detained the right of recourse to a court of law. Attention had since been paid to the existing law on military disciplinary procedures, which had been amended so that a conscript now had the right to have any decision involving deprivation of liberty examined by a court.

10. With respect to the Aliens Act, to which reference was made in paragraph 50 of the report, a new bill had been drafted and presented to Parliament in April 1990. An important feature of the bill was that any decision to take an alien into custody must be communicated to a court within 24 hours and the court must deal with the case within four days. Any person taken into custody must be kept in suitable premises. There were no limitations on the length of custody, but it must be reviewed ex officio by a court every two weeks. The reasons for custody were listed in the bill. A person could be so held if there was reason to believe that he would go into hiding, if he was likely to commit a crime or if his identity was uncertain. There were also some general provisions. For example, a young person under 15 years of age could be detained in custody only in exceptional circumstances, and family members must not be separated. A further point concerning article 9 was that a new Criminal Investigation Means Act, a translation of which was annexed to the report, had entered into force in January 1989.

11. In relation to article 10, there were plans to improve the prison system and penal sanctions in general. The aim was to reduce the rate of imprisonment, for which purpose the Government had submitted a bill to Parliament in 1989 for the partial reform of the Young Offenders Act, whereby juvenile delinquents could be sentenced to imprisonment only for exceptional reasons.

12. Under article 12, reference was made to the new Passport Act, which had entered into force in October 1987 and was based on the principle that a citizen's right to travel abroad was a basic right whose exercise could be restricted only for very serious reasons, which were enumerated in the report. One example was the denial of a passport to a person found incapable of caring for himself. Finland took great care of its citizens and if a Finn was stranded abroad he was normally brought home at the expense of the State. In principle, the costs had to be reimbursed, but there were many cases in which the persons concerned had no resources, and when they were repeatedly stranded abroad, it could justly be questioned whether it was the duty of the State to continue to pay for their holiday trips. It had therefore been argued that passports should not be granted to people incapable of caring for themselves. Under Finnish law, a Finnish citizen could not be deported and always had the right to return to Finland.

13. Referring to article 14, he said that when ratifying the Covenant, Finland had made a reservation to article 14 (3) (d). A new Pre-Trial Investigations Act, which had entered into force in January 1989, provided for the right to legal counsel during pre-trial investigations. An amendment to the Cost-Free Proceedings Act had extended the availability of legal aid to the pre-trial investigation stage. Those two pieces of legislation had made the reservation in question unnecessary.

14. With regard to article 17, he drew attention to the new legislation on personal data files, which had been prepared after extensive public debate and had entered into force in 1988. Its purpose was to protect the privacy, interests and rights of citizens, to safeguard State security, to establish good and uniform data file practices, and to ensure a certain openness in the use of such files. The scope of the Personal Data File Act was extensive. It included provisions for the collection and recording of personal data, the use of personal data files and the release of such data. The Act made unauthorized access to personal data files a criminal offence and provided for the appointment of a Data Protection Ombudsman. The police in Finland were not permitted to tap telephone conversations.

15. Under article 18, new legislation relating to conscientious objection had entered into force at the beginning of 1987 for a trial period of five years. It provided that a conscript could be admitted directly to alternative service, which was for a period of 16 months, or twice the minimum length of military service, since civilian service was considered to be the less strenuous alternative. It currently included relevant training and work, which could be said to be useful to the future profession of the person performing civilian service. Persons who refused to accept even unarmed service could be sentenced to imprisonment for approximately one year. Jehovah's Witnesses were entirely exempt from military service.

16. With respect to article 19, there were two aspects to the limitations on freedom of expression. Firstly, the new Pre-Trial Investigation Act provided that information on pre-trial investigation must be so distributed that no one was suspected of an offence without adequate reason and that no unnecessary harm was caused. The official in charge of the investigation could prohibit anyone from divulging information on investigations if that might hamper the investigations or cause harm to those concerned. Such prohibition was valid for a maximum of three months at a time. His second observation concerned the 1987 Act on the Censorship of Video Programmes and Other Pictorial Programmes. That Act made the distribution of video cassettes and similar films subject to approval by a public authority; such approval could be denied where the programme was obviously in breach of the law or where it violated morals, made the viewer susceptible to brutal tendencies or was harmful to mental health. All those limitations on freedom of expression had been considered necessary for the protection of public order, public health or morals in accordance with article 19. It could be seen from the statistics in the report that programmes had been censored only to a very limited extent.

17. With respect to article 22, the traditional limitations concerning aliens had to some extent been abolished. Under the new Associations Act, aliens had the unrestricted right to be members of the board of an association. The founding of an association in which the majority of or all members were aliens was no longer dependent on specific government approval.

18. Turning to article 23, he said that equality between the spouses had been even further stressed in the new Marriage Act of 1987. Under the Act, the marriageable age for both spouses was 18 years. Following a lengthy debate, the Surname Act had been revised in 1985 to make it possible for the spouses to choose whichever surname they wished to adopt.

19. The section on article 27 dealt with the question of minorities, which was limited to the Samis and Romanies.

20. The CHAIRMAN invited the delegation of Finland to reply to the questions raised in the various sections of the list of issues to be taken up in connection with its third periodic report.

I. Constitutional and legal framework within which the Covenant is implemented (articles (2) and (3))

"(a) Please provide some illustrations of the activities of the Committee on International Human Rights Issues since the submission of the third periodic report.

(b) With reference to paragraph 19 of the report, please provide some details concerning the Supreme Administrative Court case where the Covenant was applied for the first time by a Finnish court, as well as concerning some of the decisions rendered by the Parliamentary Ombudsman where provisions of the Covenant had also been taken into account.

(c) Have there been any suits filed pursuant to article 93 (2) of the Constitution Act, in particular proceedings involving charges of violations of the Covenant? (See para. 8 of CCPR/C/32/Add.11)."

21. Mr. GRÖNBERG (Finland), referring to section I (a), said that since its establishment the Committee on International Human Rights Issues had held about 10 meetings annually for the effective monitoring of developments relating primarily to the international dimension of human rights; all the national aspects had simultaneously been given critical consideration. There were four main areas of interest which the Committee had kept under particular scrutiny: United Nations, Council of Europe and CSCE activities, and the relationship between development aid and human rights. Important issues were discussed in the Committee before being dealt with in the United Nations Commission of Human Rights, the Third Committee of the General Assembly or the Human Dimensions meetings of the CSCE. Consideration by the Committee had also become part of the process leading to ratification of important human rights instruments such as the European Convention on Human Rights, the Convention on the Rights of the Child and the draft convention on the rights of migrant workers. The Committee had held a seminar on development aid and human rights. It would eventually publish a new Finnish version of a compilation of international human rights instruments, and it was planned to organize research on human rights questions following the allocation in the near future of the necessary financial resources.

22. The Committee gave its opinion on Finnish draft reports to various United Nations bodies, such as the report under consideration, and reports on the elimination of discrimination against women and of racial discrimination, economic, social and cultural rights and torture and other, cruel, inhuman or degrading treatment. One or more members of the Committee had been members of the Finnish delegations participating in meetings of the Commission on Human Rights, the Committee on the Elimination of Racial Discrimination, and the CSCE Human Dimensions meetings in Paris and Copenhagen, at which the Chairman of the Committee had made a statement on the status and rights of national minorities.

23. A number of national and international human rights experts had addressed the Committee at regular intervals. Because of a lack of financial resources, its plans to visit equivalent bodies in the other Nordic countries had so far not been realized, but such visits would be made in the near future. It was somewhat early to assess the extent to which its activities had promoted the participation of the various sectors of Finnish public life in the discussion on the development and implementation of international human rights standards, but the Committee had certainly proved to be an expert body whose opinions had been most valuable for the work of the Ministry of Foreign Affairs. Although its views had not been published, they had had considerable influence on Finnish statements in various forums, and its members had commented on human rights issues in the media. One of its members had recently been elected Finnish representative in the European Commission on Human Rights.

24. Mr. LEHTIMAJA, referring to section I (b), said that the meaning of the application of the Covenant or international human rights norms was not always self-evident in a domestic court of law. First, there might be a question of direct applicability of self-executing norms; secondly, international human rights norms might be used as a means of interpretative argument when applying other legal norms; and thirdly, human rights norms might be referred to by way of obiter dicta. The Supreme Administrative Court decision taken in 1988 - the first occasion on which a higher court of law in Finland had referred to the Covenant - had concerned the cancellation of a passport, a matter which at that time had been regulated by government decree only, and not by law, and

the party in the case had invoked article 12 of the Covenant, which provided that everyone should be free to leave any country, including his own, and that that right should not be subject to any restrictions except those provided by law. He had claimed that, as the restriction was not based on law but only on government decree, his rights under the Covenant had been violated. The Court had argued that there was no conflict of norms in the case because the restrictions set forth in article 12 of the Covenant were applicable. That was a historic decision since it was the first time that a court of law in Finland had taken a clear stand on the question of direct applicability of the Covenant. The basic attitude of the judiciary and the courts of law in Finland was becoming increasingly favourable to the issue of direct applicability, which had been approved in principle, but the crucial question was that of disseminating information on how judges could rely on international human rights norms, and on the position of those norms in the hierarchy of norms. The question was under constant discussion, but there would in the future be an increasing number of court decisions in which the Covenant and international human rights norms were applied, particularly where no equivalent domestic legal norm was available.

25. With reference to section I (b), he said that the Parliamentary Ombudsman had played a pioneering role in the practical application of human rights law. The Ombudsman ensured that the decisions of public officials were consistent with the law and, since the Covenant and other human rights instruments had been incorporated into Finland's domestic legislation, they came within the Ombudsman's sphere of competence. The Ombudsman did not normally refer to international human rights instruments if there was an equivalent provision in Finnish law. There were, however, occasions where he quoted international instruments in order to promote greater awareness of their provisions. For instance, under the Finnish Constitution, a number of rights were confined to Finnish citizens, but the Ombudsman had stated on several occasions that those rights should be enjoyed by non-citizens as well, in accordance with article 26 of the Covenant.

26. Before the entry into force of the Pre-trial Investigations Act in 1989, most of the guidelines for the protection of human rights in pre-trial investigations had been contained in circulars distributed by the Ministry of the Interior. The Ombudsman had called for the implementation of the relevant provisions of the Covenant (covering, for instance, custody of the accused, the right to the services of a lawyer, etc.), which were more detailed than any existing statutory provisions.

27. In the past, the judiciary had often been thought of as part of the civil service: the Ombudsman had emphasized the importance of the independence of judges which, he felt, might be compromised by the tradition of fixing judges' salaries by means of collective bargaining. The Ombudsman had also commented on the right of privacy in cases where persons detained in prisons or mental hospitals had been subjected to constant surveillance by closed-circuit television.

28. Mr. GRÖNBERG (Finland), referring to section I (c) of the list of issues, said that no suits had been filed under article 93 (2) of the Constitution Act, which covered, among other things, alleged violations of the Covenant.

29. Mr. WENNERGREN thanked the members of the Finnish delegation for their report on recent developments in the legal system. In paragraph 3 of Finland's third periodic report (CCPR/C/58/Add.5), it was stated that the Government was reviewing the country's legislation and administrative practices before it ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms. Had that review considered the situation of persons deprived of their freedom, whether in prisons, mental hospitals or drug rehabilitation centres? In particular, were such persons given the right to freedom of expression, the right to freedom of information (e.g. access to newspapers, radio and television programmes and video cassettes) and the right to vote or to be elected to public office? What were Finland's views on the enjoyment of such rights by persons deprived of their liberty?

30. With reference to section I (b) of the list of issues, relating to the direct application of the Covenant by Finnish courts, as he understood it, Finland had adopted a law which incorporated all the provisions of the Covenant into Finnish legislation. When the Supreme Administrative Court had applied the Covenant in a 1988 decision (see document CCPR/C/58/Add.5, para. 19), had it referred solely to the Covenant, or to that other law as well? In the case referred to, the Supreme Administrative Court had decided that there was no conflict between a certain government decree and the Covenant; however, what would have happened if there had been a conflict? Surely the Covenant had the force of domestic law and would thus take precedence over a mere decree?

31. He gathered from the information before the Committee that the courts in Finland were not competent to decide whether a law was constitutional or not. However, in the case described above, the Supreme Administrative Court had apparently been able to decide whether there was a conflict between a government decree and the provisions of the Covenant. Surely, in that case, it would also be competent to decide whether there was a conflict between a particular law and the Constitution, in other words, to rule on the constitutionality of that law.

32. Mr. POCAR thanked the Finnish representatives for their report and their statements to the Committee. He had been particularly pleased to see that the report covered Finland's obligations in the case of complaints by individuals under the Optional Protocol as well as its obligations under article 40 of the Covenant. Under article 2 of the Covenant, States parties were obliged to take measures not only to prevent future violations of civil and political rights, but also to remedy violations which had already occurred. Finland had described in considerable detail the changes it had made in its legislation, but he would welcome more information about the legal or other measures adopted to remedy the specific violations of the rights of individuals on which the Committee had commented.

33. Mr. COORAY noted that, according to paragraph 20 of the report, the Provincial Administrative Courts were now completely independent from the Provincial Administrative Boards. Did that mean that the judges in those courts were also completely independent, and how was their independence guaranteed?

34. A number of rights, outlined in chapter II of the Finnish Constitution, applied only to Finnish citizens. They included the right to equality before the law which, according to article 26 of the Covenant, should be enjoyed by everyone without exception. As one of the Finnish representatives had said, the Parliamentary Ombudsman had called for the extension of certain rights to cover non-citizens. However, as he understood it, such changes would not affect the Constitution, which could only be amended by a constitutional document. Had the drafting committee established by the Government in September 1989 considered any changes to chapter II of the Constitution?

35. Mr. AGUILAR URBINA thanked the representatives of Finland for their report and paid tribute to Finland's contribution to the establishment of democracy in his own region, Latin America. He would like to know more details about the exact position of the Covenant in Finnish law. What would happen if there was a conflict between the Covenant and domestic legislation? His other question concerned the separation of the Provincial Administrative Courts from the Provincial Administrative Boards. Were those Courts now entirely independent, or were they dependent on the executive or judicial authority?

36. Mr. ANDO thanked the representatives of Finland for their concise but comprehensive report. He had a question about the Committee on International Human Rights Issues (para. 4 of the report). As he understood it, that Committee was attached to the Ministry for Foreign Affairs. However, in most countries, centres for human rights were attached to the Ministry of Justice. Were there any plans to increase the role of the Finnish Ministry of Justice by, for example, making the Committee an interministerial body?

37. Mrs. HIGGINS commended the delegation of Finland for its excellent report, which gave ample information about recent legislation, administrative action and potential developments in that country. She was particularly impressed by the excellent references in the introduction to each section and the references to various communications as appropriate. That approach provided a pedagogical service and enabled the reader to obtain a broad picture of developments in Finland in relation to the Covenant.

38. She associated herself with Mr. Pocar's question concerning cases in which the Committee had said that effective measures should be taken to remedy specific violations and wondered why the individuals concerned had had to go through domestic litigation in order to obtain those remedies, whereas the State had been given considerable latitude to decide on the form the remedy should take.

39. Regarding the applicability of the Covenant in relation to the case in which cancellation of a passport had been based only on a decree, and where it had been held that there was no conflict of norms because the limitation under the decree was comparable to the limitation found in article 12 (3) of the Covenant, she wondered whether the provision that the limitation should be prescribed by law had been met and would welcome an explanation as to the legal nature of a decree as opposed to a law in the Finnish legal system.

40. The role of the Parliamentary Ombudsman, especially in publicizing the Covenant, was of considerable interest. Regarding the work currently under way to prepare for Finland's participation in the European Convention on Human Rights, the Committee's experience with European countries was that they

often discharged their obligations under the Convention more diligently than those under the Covenant, merely because there was a mechanism under the Convention that required decisions to be enforced in domestic law, whereas there was no comparable mechanism under the Covenant. She deplored that situation, and urged continuation of pedagogical efforts and references to the Covenant in the courts, as appropriate.

41. Mr. WAKO associated himself with the compliments paid to the delegation of Finland on the Finnish Government's excellent report, which contained useful statistics on each of the rights under the Covenant, giving a clear picture of the extent of the enjoyment of those rights in Finland. Other Governments would do well to follow that example.

42. He shared the views expressed by Mr. Cooray and Mr. Ando about the Provincial Administrative Courts. In connection with section I (a) of the list of issues and paragraph 4 of the report relating to the Committee on International Human Rights Issues, he wondered what attitude was taken by that Committee and by the Government regarding the use of development aid to promote human rights.

43. Mr. EL-SHAFEI expressed appreciation for Finland's excellent report and the ongoing dialogue between the Human Rights Committee and the Government of Finland. In relation to the fact that only certain articles of the Covenant appeared to have been incorporated into Finnish law, he wondered whether legal remedy could be sought for alleged violations of articles of the Covenant which had not been incorporated into domestic law.

44. He commended the Finnish Government's impressive record of bringing domestic legislation into line with international standards and the withdrawal of many of the reservations which Finland had initially made on its accession to the Covenant. In that respect, he hoped that the Government would soon remove the remaining reservations. He associated himself with Mr. Wako's question concerning the Government's policy of development aid and requested information about the activities of Finnish non-governmental organizations in the area of the promotion of human rights.

45. Mr. PRADO VALLEJO joined other speakers in commending the delegation of Finland on the excellent report submitted and on Finland's outstanding record in the area of human rights guarantees. Finland offered a greater number of remedies for human rights violations than most countries and he wondered how those numerous remedies were co-ordinated in practice. In particular, he wondered whether a citizen could choose the remedy for which he wished to apply and whether all remedies were available to aliens as well as to nationals.

46. Mr. GRÖNBERG thanked the Committee for having expressed satisfaction with the report and expressed his delegation's own appreciation for the dialogue instituted during its presentation.

47. Mr. LAHTI, responding to Mr. Wennergren's question about the impact of the deprivation of liberty on other rights, explained that since the 1970s it had been a principle in Finnish legal practice that the rights of a person deprived of liberty might be curtailed only to the extent necessary for the fulfilment of the purpose of his detention. Force might be employed against a person admitted involuntarily to a mental institution only in so far as it was

necessary for the treatment of his illness and to guarantee his own safety and that of others. Provisions to that effect were contained in various acts on mental illness. A similar provision existed concerning prisoners. The Parliamentary Ombudsman had dealt with that issue in a decision stating that all persons (including patients with mental disorders), being equal before the law, were entitled to the enjoyment of human rights within the limitations set by the requirements of their treatment.

48. Mr. LEHTIMAJA, responding to Mr. Wennergren's other questions, explained that Finland did not have constitutional review in the sense in which it was understood in other countries, where courts of law had the power to rule on the constitutionality of ordinary legislation enacted by Parliament. In Finland, it was up to the Constitutional Committee of the Parliament to comment on the compatibility and conformity of government bills and other bills with the Constitution, and once legislation had been enacted by Parliament, courts of law were bound by the Constitution to apply that legislation, without questioning its constitutionality. It was then merely a question of following the ordinary interpretative rules, such as lex posterior. Government decrees or statutory orders were decrees issued by the President and the Government, not by Parliament. The courts of law did not have the power to review government decrees as to their conformity with legislation. However, the Constitution contained a provision whereby a government decree which was in conflict with a constitutional or other legal provision could in practice be ignored by a judge or civil servant. It was that provision which had been referred to in the Supreme Administrative Court case mentioned in paragraph 19 of the report. The argument of the applicant in that case had been that, because cancellation of the passport had been based on a government decree that was in conflict with the provisions of the Covenant, and because those provisions had been incorporated in to Finnish domestic law by an enactment giving them legal force equivalent to that of other parliamentary enactments, the court of law should have ignored the government decree and applied the Covenant instead. Without entering into all the details of that rather complex case, it was interesting to note that the Supreme Administrative Court had held that it was possible to apply the Covenant and that a judge or court could therefore ignore a government decree on the basis of the Covenant's provisions.

49. In reply to Mrs. Higgins' question, he said that a law should be understood to mean a provision resulting from a formal enactment and one that could be defined as a precise and predictable norm. Any standard prescribed by law in an international human rights instrument had to be a parliamentary enactment, which had been promulgated in due form.

50. In reply to the questions asked by Mr. Cooray and Mr. Aguilar, he explained that the main effects of the separation of the Provincial Administrative Courts from the Provincial Administrative Boards, the latter being executive bodies, had occurred at the logistic and administrative levels. The Administrative Courts, which had formerly come under the authority of the Ministry of the Interior, were currently under the authority of the Ministry of Justice. A major purpose of the change had been to emphasize, especially in the public mind, the judicial function and independence of those Courts. In that respect, human rights law had helped Finland gradually to pay greater attention to the need to take the independence of the judiciary seriously. Historically, the Administrative Courts had been close to the executive, and State authorities had been

expected to defend the interests of individuals, but that situation obviously conflicted with the concept of an independent judiciary; the separation of the Administrative Courts from the Administrative Boards marked a first step towards such independence. However, further progress needed to be made in that area. A question that required particular attention was whether the relationship between State authorities and individuals in Finland corresponded to the norms established by the European Court of Human Rights.

51. A number of speakers had commented on the fact that the Finnish Constitution referred only to Finnish citizens and that it was accordingly not in full conformity with article 2 of the Covenant. Legally speaking, there was no contradiction because the provisions of the Covenant had been incorporated into Finnish domestic law by parliamentary enactment, which guaranteed its full and direct applicability in the Finnish legal system. Aliens therefore had legal protection directly under the Covenant, protection which was greater than under the more general Finnish Constitutions.

52. It had rightly been pointed out, however, that there was a need to review the Constitution in that regard, and one of the main items of the terms of reference of the Bill of Rights Committee set up in 1989 to carry out a comprehensive reform of the present Bill of Rights was to ensure constitutional protection for foreigners in Finland equal to that of Finnish citizens, and at the same time clarify the legal hierarchy between domestic legal norms, both constitutional and ordinary, and the human rights norms. That Committee had been very active and was expected to submit its first interim report in the near future. The law reform work had been started before 1989 but in view of its complex nature, the Committee's earlier proposals had not yet resulted in any legislation. However, positive results were expected in view of the interest taken in human rights law during the past few years by the public at large and the legal profession in the light of Finland's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the subsequent, widely-recognized need to reform domestic and constitutional law.

53. Mr. Prado Vallejo had mentioned the question of co-ordinating the various legal remedies for human rights violations. There were indeed many remedies: ordinary courts, adminsitrative courts, Parliamentary Ombudsman, Chancellor of Justice, who also examined citizens' complaints, the NGOs and the Advisory Committee on Human Rights, and it was really up to the individual to choose the remedy he trusted most. It might be said that the remedies were to some extent duplicated, but his Government considered it important for individuals to be able to choose. Those various remedies were accessible to all persons, nationals and foreigners alike, as provided for under article 26 of the Covenant. As far as the international protection of human rights was concerned, there was now an option between the Covenant and the European Convention.

54. A number of speakers had raised the question of legal remedies on the basis of the views expressed by the Committee under the Optional Protocol. As far as certain specific cases were concerned, decisions were still pending; consequently, it was not possible to give the final view of the Government or a court of law. In one case a decision was pending in the Court of Appeal, and in another the request for compensation had been addressed directly to the Government, and various ministries had been heard on the issue. While agreeing with Mrs. Higgins that it should not be necessary to go through

domestic litigation in order to obtain a remedy, he considered that the problem with those particular cases had been that the concept of legal remedy was itself unclear. It was a special concept used for international human rights norms which had no direct equivalent in the national legal system. The Committee had left open the matter of whether it should refer to compensation or to some other remedy. The request for compensation in those cases had been made by advocates on the basis of the claim that the injury suffered by the petitioner was undue deprivation of liberty, but the views of the Committee had been understood to mean that the real issue was the lack of the necessary judicial review of an administrative decision regarding the detention. The damage suffered was not a material one and the Committee had not said that the deprivation of liberty itself was in conflict with the Covenant, merely that there was a defect in the system in that review that was lacking. Monetary compensation was therefore extremely difficult to assess, which was where the disagreement between the Government and the petitioners lay. The need to make the system clearer had been recognized, and in connection with one case the Ministry for Foreign Affairs had proposed that special provisions should be enacted to institute legal remedies in cases of human rights violations under international human rights instruments. The matter was due to be looked into in the very near future.

55. Mr. Cooray had asked whether there was any right of appeal to the Supreme Administrative Court from the Provincial Administrative Courts. The answer was that there was a right of appeal in every case, as provided for by a General Act relating to administrative appeals. That aspect of procedure had not been changed in any way because of the administrative separation which had been mentioned in the report. The administrative judges secured their independence in the same way as judges in the ordinary courts. They had full tenure of office which was more comprehensive than in the case of State officials, and they could not be subjected to disciplinary procedure. They could only be dismissed by another court of law if it was able to prove that they had committed some offence in office. They could not be given orders or even advice or recommendations as to how to apply the law by the executive branch, which exercised extreme care in that connection. However, it was interesting to note that the Parliamentary Obmudsman, whose jurisdiction was very wide and included the judiciary, could state his opinion as to how judges should exercise their functions, but that was not regarded as a violation of judicial independence. Even so, the Ombudsman was very careful not to tell the judges how to apply the law, and would only intervene when he thought there had been a clear breach of discretion.

56. Mr. El-Shafei had asked which articles of the Covenant had been incorporated into Finland's domestic law. The Incorporation Act merely stated that those provisions of the Covenant which belonged to the domain of legislation should have the force of law. It therefore depended on the nature of each provision.

57. Mr. GRÖNBERG (Finland) noted that Mr. El-Shafei had also asked about the Advisory Committee and its role in the dissemination of information on human rights questions. That was in fact one of the specific tasks of that Committee, which was trying to pursue its goal by organizing seminars and publishing booklets on human rights issues. It had not achieved very much so far, but it had only been in existence for less than three years.

58. Mr. Ando had asked about co-operation between the Ministry of Justice and the Ministry of Foreign Affairs, whether the Advisory Committee represented an attempt to promote closer co-operation between those two Ministries, and whether there were any plans to create a new interministerial committee to look into human rights questions. The answer was that the present situation was considered adequate; there was very close co-operation between the two Ministries. Although the Finnish report had been considered by the Advisory Committee, it had in fact been prepared by a small working party consisting of representatives of both Ministries. The report which had formed the basis for Finland's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms had been completed by the Ministry of Justice, but the bill itself had been drafted by a joint working party of representatives from both Ministries.

59. The questions raised by Mr. Wako on development aid and human rights, and questions on the role of NGOs required more time and would be answered later. The question raised by Mr. El-Shafei on Finland's reservations when ratifying the Covenant would be dealt with in connection with section VII.

60. Mr. WENNERGREN asked whether the following understanding of Mr. Lehtimaja's reply was correct: the Finnish legal system did not acknowledge the principle of lex superior when there was a conflict of interest between a provision in the Constitution and a provision in the law, but it did acknowledge that principle in the case of a conflict between a provision in a law and a provision in a decree. Did that then mean that where there was a conflict between a provision in the Constitution and a provision in a law, the law of lex posterior would prevail, and would that in turn mean that as the blanket act incorporating the Covenant into the Finnish legal system was lex posterior in relation to the Constitution, the act incorporating the Covenant would prevail if there was a conflict between a provision in the Constitution and a provision in the Covenant which had become a provision according to Finnish law?

61. Mr. LEHTIMAJA (Finland) admitted that the system was a very complicated one which was subject to various interpretations even in Finland. As far as the first part of Mr. Wennergren's question was concerned, it could be said that the lex superior rule only concerned the relationship between a law, parliamentary enactment and government decree. As far as the latter part of the question was concerned, Mr. Wennergren's interpretation was a prevailing one but was not shared by all Finnish legal scholars. If the Committee so wished, he could give a more detailed analysis of the various views of the Finnish legal system at a later stage.

II. Self-determination (article 1)

"Has the new Self-Government Act for the Aaland Islands been enacted by Parliament?"

62. Mr. GRÖNBERG (Finland) said that when he had introduced the report, he had referred to the new bill submitted to Parliament in respect of the Aaland Islands on 31 May 1990. The debate in Parliament was continuing, but was expected to finish towards the end of the year and the new law should enter into force in the course of 1991.

III. State of emergency (article 4)

"What is the current status of the bills relating to states of public emergency described in paragraphs 26 and 27 of the report?"

63. Mr. GRONBERG (Finland) said that, as the report also indicated, a bill had been submitted to Parliament in December 1989. The matter was still pending but the bill should be passed by the end of the year.

64. Mr. MAVROMMATIS said that, generally speaking, the Finnish report gave evidence of continuous progress, which in some cases put Finland months, if not years, ahead of other countries with regard to the protection of human rights, taking into account developments in technology, and their effect on human rights, and the welcome compliance with the Optional Protocol and the decisions of the Committee.

65. With particular regard to the new legislation, even after reading paragraph 26 of the report a number of times he was still not sure whether certain non-derogable rights might or might not be derogated from under the new legislation. Measures could be taken under article 4 of the Covenant, which also covered economic emergencies and crises, and might necessitate derogation from a number of derogable rights protected by the Covenant and even some non-derogable rights. The Committee would therefore like to know whether every one of the articles in which it was interested could be derogated from and would also welcome some sort of assurance that there would be State compliance with the provisions of article 4 in respect of new legislation.

66. Mr. WAKO said that his question was the same as that raised by Mr. Mavrommatis. However, paragraph 27 of the report should also be borne in mind in the reply because, although it was stated that the requirements of article 4 of the Covenant had been taken into account in the Draft Act, it was not specifically stated that the no-derogational clause in article 4 (2) of the Covenant had also been taken into account.

67. Mrs. HIGGINS said that she too was confused by paragraph 26. Mr. Mavrommatis had rightly said that, in principle, a country could derogate under article 4 even in an economic crisis, because the test was public emergency which threatened the life of a nation and such an emergency could arise either in a military circumstance or in extremely severe economic circumstances. However, it was not clear whether paragraph 26 was saying that the Act would apply in an economic crisis that still did not threaten the life of a nation, and therefore did not meet article 4, or whether it assumed that an economic crisis was not within the reach of article 4. If a country was within article 4 for no matter what reason, it was simply the non-derogable clauses which could not be derogated from; the fact that the crisis was economic rather than military would not alter the clauses in the Covenant that could or could not be derogated from. Clarification as to what paragraph 26 was actually saying would be much appreciated.

68. Turning to paragraph 27 on the proposed State of Defence Act, her information was that it contained proposals for the internment of persons who, because of previous criminal activity or other valid grounds, were deemed to be liable to commit certain offences. She understood that there had been some

discussion of that point; on the face of it, the relevant provision was problematic in regard to articles 14 and 15 of the Covenant, and further information would be appreciated.

69. Mr. PRADO VALLEJO endorsed the points made by previous speakers with regard to the scope of paragraphs 26 and 27, and particularly the reference to economic crisis. Latin American countries lived in a permanent state of economic crisis as a result of their external debt, and he could not understand how there could be a state of emergency caused by an economic crisis when rights could be derogated from. He therefore wondered what the scale of the economic crisis would have to be and how the rights of individuals would be affected.

70. Referring to the last part of paragraph 27, he asked whether the rights of individuals established in the Covenant would be enhanced as compared with those under the Act of 1930. He also wished to know whether, under the State of Defence Act, individuals would have remedies to ensure that no fundamental rights would be violated, as in the case of arbitrary detention.

The meeting rose at 1 p.m.